IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 1269 (S/S) of 2004

Gajendra Singh Bhadauria, Aged about 28 years,
S/o Sri Mangal Singh Bhadauria,
R/o 104, Chhipati, Etawah, District Etawah ------ Petitioner

Versus

1. **State of Uttaranchal, through Secretary, Department of Home, Dehradun**
2. **Sri S.K. Gunjial, Superintendent of Police, Pauri Garhwal**
3. **Superintendent of Police, Pauri Garhwal**

----- Respondents

Approved for reporting

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~~**Not approved for reporting**~~

Date of Decision : June 13 , 2007

Initial of Judge

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Reserved

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2. Sri S.K. Gunjial, Superintendent of Police, Pauri Garhwal
3. Superintendent of Police, Pauri Garhwal

Hon'ble M.M Ghildiyal, J.

Heard Sri R.C. Saxena, learned counsel for the petitioner Shi H.M. Raturi, learned Standing Counsel State of Uttarakhand for respondent nos. 1 and 3 and Sri Subhash Upadhyay, learned counsel for respondent no. 2.

By means of this writ petition, the petitioner has challenged the order dated 26.10.2004 passed by opposite party no. 2 contained in Annexure No. 1. He has further prayed to issue a writ in the nature of mandamus commanding the opposite parties not to give effect to the impugned order dated 26.10.2004 and pay the petitioner his monthly salary regularly.

The facts of the case as narrated in the writ petition are as under.

The petitioner was selected and appointed as Constable in U.P. Civil Police on 16.02.1995. The petitioner was transferred from

Banda to Pauri and joined at Pauri Garhwal on 19.05.1999. A preliminary inquiry was conducted against the petitioner for the charges for remaining absent from duty a number of times and one Sri Virendra Singh, Inspector, P.S. Kotwali, Pauri Garhwal after holding preliminary inquiry, submitted the report on 22.07.1999. Respondent no. 2 served a charge sheet on the petitioner on 04.10.1999 for the charges of remaining unauthorizedly absent for a period of 103 days in the first spell and for 26 days in the second spell.

Sri Hukum Singh Khati, Deputy S.P. was appointed as Inquiry Officer to inquire into the charges. The Inquiry Officer Submitted the inquiry report on 12.05.2000 holding petitioner guilty of the charges and the disciplinary authority on 10.07.2000 passed the order of removal of petitioner from service.

Aggrieved with the order dated 10.07.2000, petitioner preferred appeal which was also rejected in a mechanical way on 29.03.2001. Feeling aggrieved, the petitioner filed Claim Petition No. 1612 of 2000 challenging the removal order dated 10.07.2000 and appellate order dated 29.03.2001 before the U.P. public Services Tribunal, Lucknow. After creation of State of Uttarakhand, the said Claim Petition was transferred to Uttarakhand Public Services Tribunal, Dehradun and was registered as Claim Petition No. 146/T/2002. The Uttarakhand Public Services Tribunal vide judgment and order dated 05.11.2003 quashed the removal order and directed the respondents to reinstate the petitioner in service and to pay the entire arrears of salary after deducting the amount, if any, paid to him. It was left open for the appointing authority to institute fresh inquiry against the petitioner the argues levelled against him and may pass appropriate orders, The operative

portion of the Tribunal's order dated 5th November, 2003 is quoted hereunder:-

> *"Taking into consideration the discussion mentioned above, we are of the view that this petition deserves to be allowed. Hence, the impugned order Annexure 1 passed by the then S.P., Pauri Garhwal dated 10.07.2000 is hereby set aside and the petitioner shall be reinstated in service and shall be paid the entire arrears of salary after deducting the amount, if any, paid to him. However, it is open for the appointing authority to initiate fresh inquiry against the petitioner on the charges levelled against him and may pass any appropriate order in the light of the observations made earlier."*

After quashing of the order of removal by the Tribunal, the petitioner was reinstated in service on 01.12.2003 Aggrieved with this order passed by the Tribunal, State of Uttarakhand preferred Writ Petition No. 285 (S/B) of 2004 before the Uttarakhand High Court. The said writ petition was dismissed by the Division Bench of this Court on 20th September, 2004. While dismissing the petition of State of Uttarakhand, the Court held as under:-

> *"All this was done on account of the unauthorized absence on the part of respondent no. 1 on two occasions. That was viewed rather seriously in the enquiry. As has already been stated, the enquiry has been found to be incorrect on the technical grounds and there has also been mention about the punishment being disproportionate. As per the observations in paragraph 11, the State Government has already proceeded to hold fresh enquiry. In that enquiry, respondent no. 1 has been found guilty to the extent that he was awarded one censure entry and his unauthorized absence was treated to be leave without pay and he would not be paid salary for the period. In this view, we will not exercise our discretion under Article 226 of the*

Constitution now to reopen the issue regarding enquiry as also with regard to the fairness of the quantum of punishment awarded.

In view of the subsequent developments asserted by the learned counsel for the respondents, we do not like to use our discretion in favour of the State.

The petition is dismissed accordingly."

However, the petitioner was again absent from duty without any information to the department w.e.f. 20th March, 2004 and joined on duty after 34 days. He was again awarded censure entry. Again the petitioner, from 16.06.2004 without obtaining permission from the department and without informing the department, absented himself, and consequently, the Superintendent of Police, Pauri Garhwal passed order dated 26th October, 2004, removing the petitioner from service under Rule 8 (2)(b) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991.

Aggrieved with this order, the petitioner has preferred this writ petition. The sole ground on which the impugned order is under attack is that prior to passing the impugned order of dismissal by the Superintendent of Police, Pauri Garhwal, no full-fledged inquiry was conducted. The impugned order has been passed under the provision of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rule, 1991. Rule 4 of the aforesaid Rule provides for punishment, which is quoted as under:-

*"**4**. **Punishment**-(1) the following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely:-*

(a) Major Penalties-

(i) Dismissal from service;

(ii) Removal from service;

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

(b) Minor Penalties-

(i) Withholding of promotion;

(ii) Fine not exceeding one month's pay;

(iii) Withholding of increment, including stoppage at an efficiency bar;

(iv) Censure.

(2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also inflicted with the following punishments-

(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty);

(ii) Punishment Drill not exceeding fifteen days;

(iii) Extra guard duty not exceeding seven days;

(iv) Deprivation of good conduct pay.

(3) In addition to the punishments mentioned in sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:-

(i) Tent pitching;

(ii) Drain Digging;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines;

(V) Cleaning Arms."

Rule 5 provides procedure for award of punishment. Rule 5(1) provides that the cases in which major punishments enumerated in clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14. Sub-rule (1) of Rule 14 provides that subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix-I. Appendix-I

provides procedure relating to the conduct of departmental proceedings against Police Officer, which is quoted as under:-

APPENDIX-I

PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER

"Upon institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form I appended to these Rules which shall be communicated to the charges Police Officer and which shall be so clear and precise as to give sufficient indication to the charged Police Officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether the desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged Police Officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the Inquiry Officer may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer."

Learned counsel for the petitioner submits that the procedure prescribed under the Rules has not been followed in the case of the petitioner and in fact, no enquiry was conducted in accordance with law. Learned counsel for the petitioner has also drawn my attention to Rule 8 of the Rules which provides dismissal and removal:

"*Rule 8(1) of the Rules provides that no Police Officer shall be dismissed or removed from service by an authority subordinate*

to the appointing Authority. Rule 8(2) of the Rules provides that no Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these Rules:

> *Provided that this rule shall not apply-*
> *(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
> *(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or*
> *(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry*."

Learned Standing Counsel has submitted that it was practically not possible to hold an enquiry against the petitioner and as such, under Rule 8, sub-rule (2)(b) which provides that where the authority, empowered to dismiss or remove a person or to reduce him in rank, is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry or (c) where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry, the petitioner was removed from service. So far Rule 8, sub-rule (2)(c) is concerned where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry, the Police Officer can be dismissed or removed without conducting full-fledged enquiry. It is not recorded in the reason that the security of the State was involved. Further, where the security of the State is involved, the Government must satisfy itself that holding enquiry is not expedient. In the present case, there is no decision of the Government nor in the impugned order it is stated that security of the State was involved.

In the petitioner's case, for not holding enquiry, according to the learned counsel for the petitioner, falls under Rule 8(2)(b) which says that if the Competent Authority is satisfied for the reasons to be recorded that it is not reasonably practicable to hold such enquiry, he may dismiss the Police Officer without holding enquiry. The reasons will have to be recorded by the dismissing authority that it is not reasonably practicable to hold such enquiry. In the impugned order of dismissal, it is stated that the act of the petitioner is not good for police Service.

Even if the delinquent officer is absconded, the departmental proceeding can be held in absentia. Rule 16 of the Rules provides for conduction proceedings in absentia and only to state in the order of removal that since the petitioner was absconded, the inquiry was reasonably practicable, is not sufficient. In the present case, it is nowhere stated in the impugned order that the petitioner was absconded. On the contrary, the ground taken by the respondent for not holding inquiry is as under:-

> इस कान्स0 को 129 दिवस अनाधिकृत रूप से अनुपस्थित रहने के कारण नियम 14(1) के अन्तर्गत आदेष सख्या पीएफ–42/99 दिनांक 10.7.2000 द्वारा पुलिस सेवा से पदच्युत किया गया था तथा इस कान्स0 द्वारा माननीय लोकसेवा अधिकरण में अपील प्रस्तुत करने पर माननीय लोक सेवा अधिकरण द्वारा पदच्युत आदेष को निरस्त कर पुनः सेवा में लिये जाने के आदेष पारित किये गये थे जिसके अनुपालन में इस कान्स0 के द्वारा दिनांकः 1.12.2003 को पुनः सेवा में आगमन किया। दिनांकः 1.12.2003 को पुनः सेवा में आगमन के फलस्वरूप यह कान्स0 दिनांकः 20.3.2004 से बगेर किसी स्वीकृत अवकाष/सूचना के अनाधिकृत रूप से अनुपस्थित हो गया और 34 दिवस बाद अपनी ड्यूटी पर उपस्थित हुआ। अनाधिकृत रूप से अनुपस्ति रहने के कारण इस कान्स0 को एक परिनिन्दा लेख से भी दण्डित किया गया, जिसका उल्लेख उपरोक्त पैरा में भी किया गया है। इसके उपरांत भी यह कान्स0 दिनांकः 16.06.2004 से बगैर किसी स्वीकृत अवकाष/सूचना के अनाधिकृत रूप से अनुपस्थित हो गया। चूंकि इस कान्स0 को अनाधिकृत रूप से अनुपस्थित रहने के कारण पूर्व में नियम 14(1) की विभागीय कार्यवाही के उपरांत पुलिस सेवा से पदच्युत किया गया था परन्तु यह कान्स0 बार–बार अनुपस्थित रहने का आदी है और पुनः सेवा में आगमन करने के पष्चात् भी इस कान्स0 में कोई सुधार परिलक्षित नहीं हुआ।

इस कान्स के उपरोक्त दण्डों का यहाँ इसलिए उल्लेख किया गया है कि पुलिस रेगुलेषन में दिये गये दीर्घ एवं लघु दण्डों से दण्डित किये जाने के फलस्वरूप भी इस कान्स0 में कोई सुधार परिलक्षित नहीं हुआ है।

कान्स0 के उपरोक्त कृत्यों से स्वतः स्पश्ट है कि कान्स0 के कार्य एवं आचरण में सुधार की कोई संभावना नहीं है। पुलिस जैसे अनुषासित बल में ऐसे अनुषासनहीन एवं लापरवाह किस्म के कर्मचारी के पुलिस सेवा में बने रहने से अन्य पुलिस कर्मियों पर भी विपरीत प्रभाव पड़ना स्वाभाविक है, जिससे अनुषासनहीनता को बल मिलता हैं। भविष्य में इस कान्स0 के कार्य एवं आचरण में सुधार की कोई संभावना नहीं की जा सकती है।, क्योंकि इसके पूर्व में दिये गये दण्ड पर्याप्त जॉच आदि के बाद दिये गये हैं इसकी पुलिस बल में लिए अनुपयुक्तता के बारे में अलग से जाँच कराने की मेरे विचार से कोई आवष्यकता नहीं है।

The reasons recorded for not holding full-fledged inquiry against the petitioner are not sufficient under Rule 8 (2)(b)of the Rules. Since there was no full-fledged departmental inquiry against the petitioner, it is apparent that he was not afforded opportunity of hearing. The shelter of Rule 8(2)(b) of the Rules, in these circumstances, is not available to the respondents.

As it is clear from the facts that the petitioner is habitual in remaining absent from duty and that too without obtaining permission or even without informing his superiors, therefore, the act of the petitioner especially in a police force is highly deprecable. The Apex Court also in a number of cases has deprecated the habit of absence, especially in a discipline force remaining absent frequently and that too without permission of superior authorities. The charges, of course, are very serious in nature. However, before passing of order of punishment, the delinquent is required to be given opportunity of hearing and a departmental inquiry under the Rules has to be initiated by the respondents until or unless the circumstances are so that it is not practicably possible for the respondents to hold inquiry against the delinquent and for that purpose the reasons must be recorded in the impugned order.

For the reasons recorded above, the order impugned is liable to be quashed, consequently, the writ petition is allowed. Removal order dated 26.10.2004 is set aside. After perusal of the charges levelled against the petitioner and considering the seriousness of the charges, I direct the respondent/ appointing authority to initiate enquiry against the petitioner and pass fresh order in accordance with law. No order as to costs. All the pending applications stand disposed of.

(M.M. Ghildiyal, J.)

June 13,2007
VKS